judge meet the *cause* half-way." We have also observed a number of typographical errors in addition to those noted in the table of *errata;* but these each reader can readily correct for himself.

In conclusion, we must add that this Digest, which will prove such a boon to the profession in Virginia, and which will serve to bring our decisions to the attention of judges and text-writers throughout the United States, is dedicated to Judge Burks (the second book dedicated to him within a twelvemonth); and the tribute to him is so just, and so in accord with the sentiment of the Bar of Virginia, that we make no apology for reproducing it here in full:

"DEDICATION.

TO THE

Honorable EDWARD C. BURKS, LL. D., the oldest of the now living ex-judges of the Supreme Court of Appeals of Virginia; whose high integrity, rare scholarship, and profound learning in the law, as exhibited in his briefs and arguments at the bar, and in his reported opinions delivered from the bench, have made him a model lawyer and judge of his day and generation; whose closing years of a ripe old age, he has dedicated to his legal brethren, by founding, and editing, with signal ability, one of the leading law publications in the Union,—

THIS WORK,

On behalf of the profession in Virginia, and as a token of their appreciation of his high Christian character, eminent ability, and valuable services to them and to the State,

Is most respectfully and affectionately inscribed by

THE AUTHORS."

C. A. G.

OUTLINES OF FEDERAL JURISDICTION AND LAW PROCEDURE, PREPARED AS A BASIS OF LECTURES TO LAW STUDENTS AT THE UNIVERSITY OF VIRGINIA. By W. D. DABNEY, Professor of Law Practice and of the Law of Contracts, Torts and Common Carriers in the University.

To the average practitioner the Federal courts are full of mystery. They are looked upon as alien jurisdictions into whose arcana but few can peer, and whose precincts are but rarely sought except *in invitum*. Meeting in half a dozen places in the State, they are frequented only by a small minority of the city lawyers, who partially familiarize themselves with their rules. The writer can name instances where leading lawyers of the State have been tripped up in those courts on such simple things as failure to file a written replication in chancery, or incorrectly drafted bills of exception. Yet it is not difficult to learn the practice of the Federal courts, if only the searcher for information goes about it in the right way. Disregarding the admiralty practice which, though simplicity itself, is not of general interest, but is confined to few localities and practitioners, it will be seen that the criminal procedure is practically identical with that in the State courts; the common law procedure is nearly the same, though with some sharp and important distinctions; and therefore the main differences are to be found in the chancery side of the court. No statute assimilates this even "as near as may be" to the

State procedure; but any one who will become familiar with the Federal equity rules, less than a hundred in number, will feel repaid in his admiration of their simplicity and brevity, and will regret that the multiform and uncertain and inconsistent practice prevailing in the different State circuits could not be replaced by it.

Perhaps the chief reason of this prevalent unfamiliarity with the elements of Federal practice is the fact that there is no treatise that gives the general practitioner in the time at his disposal a bird's-eye view of the subject. The old classics have been relegated to the literary boneyard by the recent radical changes in the organization of the National courts, and the only productions intended to take their place have been rather digests than treatises, intended more to prepare a case for final trial than to enable any one to acquire a knowledge of the outlines of Federal jurisdiction. Foster's work on the Federal courts, which is much the best of any that have so far appeared, is a good example of this; yet no one would select it as a review of the general field, however necessary he might find it in the preparation of a case for argument.

It would seem, therefore, that Prof. Dabney's book fills a popular demand and has a distinct *raison d'etre*. While the specialist may find much well known matter in it, the busy general practitioner, who suddenly sees his pet damage case removed from his county jury into a distant Federal courthouse, can, by the time of filing the record, obtain a clear idea whether it is worth while to move to remand, and, if not, how to prepare for trial, and how for an appeal, if such an alternative is presented. It is difficult to see how the subject could be treated more clearly than Prof. Dabney has handled it, and his students can feel confident that if they thoroughly master the contents, they will be more than a match for the vast majority of the practitioners to whom they will be opposed, and for a long time will not need any other treatise as a weapon of offence or defence, as far as the common law practice is concerned.

It is to be regretted that the division of work among the professors at the University has constrained Prof. Dabney to discuss only the common law side of Federal procedure. Comparatively an insignificant proportion of the common law litigation finds its way into the United States courts. On the other hand their chancery business is large in volume, important in character, and if the prosaic features of our profession may be adverted to, lucrative in results. Then, too, the fact that there is no Federal statute adapting State chancery procedure even partially, and the further fact that the question of parties in a chancery suit is more complicated than on the other side of the court and comprises a large mass of Federal legal learning, render an outline discussion of this branch a matter of the greatest interest to the bar. It is a loss to the profession that a clear, terse treatment of this department of Federal practice is not contained between the covers of Prof. Dabney's book.

His treatment of the subject to which he has confined himself is worthy of the highest commendation. He has shown special discrimination in his selection of authorities, being content almost invariably with one good decision on each proposition, and that a decision of the Supreme Court, thus avoiding the danger of being swamped in the sea of *nisi prius* opinions. And the book is a model of accuracy, challenging the detection of any considerable errors. The statement on p. 21 that a State statute can give an action *in rem* in the admiralty for damages resulting in death, is, however, a misapprehension of the case of *Barton* v. *Brown*,

145 U. S. 335, cited to sustain it. The statute passed upon in that case did not purport to give an action *in rem;* and for that reason the court decided against the jurisdiction, declined to decide what effect the statute would have had if it had given it.

As a matter of fact a State statute does not *proprio vigore* confer jurisdiction on the admiralty court. Such statutes long existed in many of the States, and yet they were *brutum fulmen* until the Supreme Court by its Twelfth Admiralty Rule allowed their enforcement. A similar rule allows the enforcement of pilotage claims; and the real principle is that these liens derive their vitality not from the State statute but from the Supreme Court rule adopting it. Hence, it would seem that such a statute giving a remedy *in rem* would not apply in the admiralty until adopted by a Supreme Court rule; and it is believed that such will be the final decision of this much vexed question when presented to the Supreme Court in such form that it can no longer be evaded or "reserved."

One inclined to be hypercritical might find fault with the statement, on page 32, that, on a bond for $1,500 with five years interest at six per cent., the principal and interest constitute the matter in controversy.

The statement is by way of illustration, and is evidently a mere slip; for in a dozen other connections the fact appears that under the Tucker-Culbertson Act, the matter in dispute must exceed $2,000, exclusive of *interest* and costs.

The outline of the all-important jurisdiction of the circuit courts, both original and by removal, is clear and useful, though a rather fuller treatment of jurisdiction as dependent on the existence of a Federal question would have filled a want as yet unsatisfied by more pretentious works.

The treatment of the jurisdiction acquired by removal from the State courts is, however, peculiarly happy, and leaves little to be desired as far as regards the common law side. But the most valuable portion is the last half of the book, discussing the rules of decision and the rules of procedure.

The weight to be attached in the Federal Courts to the State decisions, both on general questions and in construing local statutes or local rules of property, is admirably reviewed in about forty pages of text, at once sufficiently elaborate to avoid obscurity and sufficiently terse to avoid prolixity.

The third part, discussing the adoption of the State practice at common law by sec. 914 of the Revised Statutes, is also excellently done. As far as the reviewer may judge from his own experience, the most common stumbling-block in the Federal Courts to the practitioner who is not a specialist, is the preparation of instructions and bills of exception based on them. The custom of charging the jury usually adopted by the U. S. judges, and their habit of directing a verdict, are a veritable terror. And when the practitioner recovers from such a blow sufficiently to note an exception, and prepares a bill like that used in the State courts, merely reciting the offering and granting of the instruction and his saving the point, and so takes his case to the appellate court, his dismay is boundless on being told that in the Federal courts he must point out the special part of the instruction or charge to which he excepts. Prof. Dabney makes all this very clear and the practitioner who has an important case coming on in a Federal court would find it well worth his while to read this portion of the book.

Next to the above, perhaps the greatest difference between the Federal and State courts at common law, is the procedure in maturing an appeal. The Federal procedure is entirely different from that adopted in going to the State Court of Appeals, though equally simple. It is made so plain by this book that there ought to be no excuse hereafter for mistakes.

In short, the work, though intended for law students and therefore not sufficiently elaborate to be called a thorough treatise on the subject, is more than a mere outline, as the author modestly terms it; and the active practitioner who learns its contents can rest assured that he has acquired an accurate knowledge, and much more than an elementary knowledge. of Federal common law practice.

Norfolk, Va. ROBERT W. HUGHES.